

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

PITTSBURGH ASSOCIATES

Employer

and

Case 6-RC-12464

PITTSBURGH STADIUM INDEPENDENT
EMPLOYEES UNION

Petitioner

PSSI STADIUM CORP., INC.^{1[1]}

Employer

and

Case 6-RC-12465

PITTSBURGH STADIUM INDEPENDENT
EMPLOYEES UNION

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTIONS

The Employer in Case 6-RC-12464, Pittsburgh Associates, operates PNC Park, a sports and events stadium in Pittsburgh, Pennsylvania, the Pittsburgh Pirates home field, where it employs approximately 312 employees.

The Employer in Case 6-RC-12465, PSSI Stadium Corp., Inc., operates Heinz Field, a sports and events stadium also located in Pittsburgh, Pennsylvania, the Pittsburgh Steelers home field, where it employs approximately 340 employees.

The Petitioner, Pittsburgh Stadium Independent Employees Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor

^{1[1]} The name of this Employer appears as amended at the hearing.

Relations Act seeking to represent units of employees working at the two stadiums. The Intervenor, Service Employees International Union, Local 508, AFL-CIO, CLC, is the current collective-bargaining representative of the petitioned-for employees.^{2[2]} A hearing officer of the Board held a hearing in these matters.^{3[3]}

As evidenced at the hearing, the parties disagree on one issue: whether the Petitioner is a labor organization under Section 2(5) of the Act.^{4[4]}

The Petitioner seeks to represent units which are co-extensive with the units currently represented by the Intervenor. In Case 6-RC-12464, the petitioned-for unit consists of certain Game Day Staff employed by the Employer at PNC Park, specifically, hosts/hostess, greeters and ticket sellers,^{5[5]} excluding all other employees, including office clerical employees, guards, professional employees and supervisors as defined in the Act.

In Case 6-RC-12465, the unit sought by the Petitioner consists of certain individuals employed by the Employer at Heinz Field, specifically, Event Day Attendants, Club Level Section Bowl Attendants, Event Day Ticket Takers and Ticket Sellers;

^{2[2]} Service Employees International Union, Local 508, AFL-CIO, CLC intervened in Case 6-RC-12464 based on its current contract with Pittsburgh Associates which is effective by its terms from Opening Day 2001 until February 1, 2006. The Intervenor also intervened in Case 6-RC-12465 based on its recently-expired contract with PSSI Stadium Corp., Inc. Puerto Rico Marine Management, Inc., 242 NLRB 181 (1979). There is no contract bar issue in this proceeding.

^{3[3]} All parties filed briefs in this matter, which have been duly considered by the undersigned.

^{4[4]} In its brief the Intervenor asserts that because its counsel was retained one day before the hearing, it was denied the opportunity to investigate facts relevant to the petitions. The record establishes that Local 508's counsel in this proceeding was previously retained as the International's counsel and that, pursuant to her request, a one week postponement of the hearing had previously been granted on May 18, 2005. Moreover, it was the International which decided to put Local 508 into trusteeship the day before the hearing in these matters. Under these circumstances, Local 508's counsel's knowledge of and access to the facts existed well before she was retained as the Intervenor's counsel in this proceeding. Accordingly, the contention that Intervenor's counsel was denied the opportunity to investigate facts relevant to the petitions is unfounded.

^{5[5]} Ticket sellers includes those employees whose job classification is advance ticket sellers.

excluding all other employees, including office and clerical employees, guards, professional employees and supervisors as defined in the Act.

While all parties agree as to the appropriateness of the bargaining units,^{6[6]} they disagree as to whether the Petitioner is a labor organization under Section 2(5) of the Act. The Intervenor contends that the Petitioner is not a labor organization within the meaning of the Act, while the Petitioner and the Employers contend that the Petitioner satisfies the statutory requisites of a labor organization. I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I have concluded that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I have directed an election in Case 6-RC-12464 in a unit that consists of approximately 312 employees. I have also directed an election in Case 6-RC-12465 in a unit that consists of approximately 340 employees.

To provide a context for my discussion of the issue, I will first provide an overview of the Employers' history of collective bargaining. Then, I will present in detail the facts and reasoning that support my conclusion on the issue.

I. Overview of Collective Bargaining History

Pittsburgh Associates and PSSI Stadium Corp., Inc. are engaged in the operation of PNC Park and Heinz Field, both of which are sports and events stadiums. PNC Park, as noted earlier, is the stadium which is the home of the Pittsburgh Pirates professional baseball team. Heinz Field, as also noted earlier, is the stadium which is the home of the Pittsburgh Steelers professional football team.

The record establishes that the Intervenor was recognized as the exclusive collective-bargaining representative of certain employees employed at the stadiums. On

^{6[6]} The Intervenor suggests in its brief that the contractual and petitioned-for bargaining units may include supervisory positions. However, this argument is specious in that the Intervenor stipulated that the currently recognized contractual units are appropriate units for collective bargaining within the meaning of Section 9(b) of the Act.

February 10, 2001, Pittsburgh Associates and the Intervenor entered into a five-year contract.^{7[7]} On June 1, 2001, PSSI Stadium Corp., Inc. and the Intervenor entered into a three and one-half year contract. These contracts cover the employees sought in the instant petitions.

II. Labor Organization Status

The record establishes that the Petitioner herein was formed shortly before the instant petitions were filed. Thus, in early May 2005, certain employees of each of the Employers discussed the fact that they wanted to form an independent union because they were dissatisfied with the representation provided by the Intervenor and were unhappy that the International Union was seeking to consolidate Local 508 with another local.

Eric Grubbs, who is employed at both PNC Park and Heinz Field,^{8[8]} testified that he is one of the two appointed officers of the Petitioner. Grubbs is the President and Tim Vetterly is the Vice President.^{9[9]} The record establishes that Grubbs created the Constitution and By-Laws for the organization, and that Grubbs' home serves as the Petitioner's headquarters. Grubbs has not generated any documents other than the Constitution and By-Laws and has not filed any documents with the Department of Labor or any other agency. Grubbs also testified that the Petitioner exists to deal with the two Employers regarding conditions of work, grievances, labor disputes, wages and other issues, and to engage in collective bargaining with the Employers. If the Petitioner is certified as the collective-bargaining representative of either or both of the petitioned-for

^{7[7]} At the time the collective-bargaining agreement was entered into, the name of the Intervenor was Pittsburgh Baseball Employees Union, Local No. 508 a/w Service Employees International Union, AFL-CIO.

^{8[8]} The record establishes that the majority of the employees in the petitioned-for units work at both venues, and that certain employees in the petitioned-for units work at only one of the venues.

^{9[9]} As of the time of the hearing, the only members of the Petitioner were its two officers, and there had been no effort to have the "several hundred" employees who supported the petitions formally join the organization.

units, it intends to engage in collective-bargaining negotiations with the respective Employers.

Section 2(5) of the Act defines “labor organization” as follows:

The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

As was observed in Coinmach Laundry Corp., 337 NLRB 1286 (2002), under this definition, an incipient union which is not yet actually representing employees may, nevertheless, be accorded Section 2(5) status if it admits employees to membership and was formed for the purpose of representing them. See also Butler Mfg. Co., 167 NLRB 308 (1967); East Dayton Tool & Die Co., 194 NLRB 266 (1971). The Board has made it clear that it is the intent of an organization, and not what it has actually done, which is critical in ascertaining labor organization status. Armco, Inc., 271 NLRB 350 (1984). An organization need not have previously dealt with the employer on behalf of the employees, or have a formal structure with a constitution and by-laws. Armco, Inc., supra; Butler Mfg. Co., supra. See also Yale New Haven Hospital, 309 NLRB 363 (1992) (no constitution, bylaws, meetings or filings with the Department of Labor).

Applying these criteria to the record herein, it is clear that the Petitioner constitutes a labor organization within the meaning of the Act inasmuch as it is an organization in which employees participate and its purpose, indeed its only purpose, is to represent the respective Employers' unit employees for the purposes of collective bargaining. Based on the above, and the record as a whole, which establishes that the Petitioner meets the statutory requirements of a labor organization, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

Allegations, such as those raised by the Intervenor, that a petitioning organization is not a distinct labor organization or that it is a sham organization created as a stratagem of Local 508's former leadership to avoid the decision to merge Local 508 into another local, have been considered by the Board to be prematurely raised in pre-election proceedings. For instance, in Butler Mfg. Co., supra, the Board considered an argument that a petitioning organization was not a labor organization because it intended to immediately affiliate with another labor organization if certified. The Board said:

[I]t would be premature and inappropriate at this time to consider the possibility suggested by the Intervenor that this still uncertified independent union would affiliate with another labor organization if it should win an election. Correlative to the Board's power to certify labor organizations pursuant to Section 9(c) of the Act is its authority to police its certification. [Footnote omitted]. Further, if after certification there is a movement for affiliation with another labor organization, the Board has provided procedures through which to test the propriety of such an affiliation. [Footnote omitted].

See also Guardian Container Co., 174 NLRB 34 (1969).

In General Dynamics Corp., 175 NLRB 1035, 1036 (1969), the Board rejected the intervenor's contention that the petitioner was "fronting" for another labor organization noting that, as here, the petitioner filed the petition, participated in the hearing, and that the petitioner's name would be on the ballot. Moreover, the petitioner alone would be certified if it won the election.

Therefore, I reject the Intervenor's contention that the Petitioner is not a labor organization because it is not a distinct labor organization or because it is a "sham" organization. Accordingly, I find that the Petitioner is a labor organization under the Act.

III. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in these matters.
3. The labor organizations involved claim to represent certain employees of the Employers.
4. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of Pittsburgh Associates, the Employer in Case 6-RC-12464, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time game day staff employees, including hosts/hostesses, greeters and ticket sellers employed by the Employer at its PNC Park, Pittsburgh, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

6. The following employees of PSSI Stadium Corp., Inc., the Employer in Case 6-RC-12465, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees working as event day attendants, club level section bowl attendants, event day ticket takers and ticket sellers employed by the Employer at its Heinz Field, Pittsburgh, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

IV. DIRECTION OF ELECTIONS

The National Labor Relations Board will conduct secret ballot elections among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Pittsburgh Stadium Independent Employees Union, Service Employees International Union, Local 508, AFL-CIO, CLC, or neither. The date, time and place of the elections will be specified in the Notices of Election that the Board's Regional Office will issue in each case subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the elections are those in the units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employers to Submit Lists of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the respective elections should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the respective Employers must submit to the Regional Office an election

eligibility list containing the full names and addresses of all the eligible voters in their respective units. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). These lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the respective lists should be alphabetized (overall or by department, etc.). Upon receipt of the lists, I will make them available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **June 24, 2005**. No extension of time to file these lists will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the respective elections whenever proper objections are filed. The lists may be submitted by facsimile transmission at 412/395-5986. Since the lists will be made available to all parties to the election, please furnish a total of **three (3)** copies, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, each Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the respective elections are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001.^{10[10]} This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **July 1, 2005**. The request may **not** be filed by facsimile.

Dated: June 17, 2005

/s/ Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Room 1501, 1000 Liberty Avenue
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^{10[10]} A request for review may be filed electronically with the Board in Washington, D.C. If a party wishes to file electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.